

### **REMARKS**

The pending Office Action addresses claims 1-37 and 39. Claims 1-6, 8-10, 13, 15-29, 31-34, 36, 37, and 39 stand rejected, and claims 11 and 12 are objected to.

#### ***Claim Amendments***

Claim 37 is amended to include some of the limitations of claim 1, and in particular to recite that the at least one connector member is integrally formed on a terminal end of an elongate member. Support for this amendment can be found throughout the specification and in the Figures, for example in FIG. 1. No new matter is added.

#### ***Rejections Pursuant to 35 U.S.C. §102***

##### ***(1) French Patent No. 2,816,195 of Taylor***

Claims 1-6, 8-10, 13, 15-29, 31-32, 34, 36-37, and 39 are rejected pursuant to 35 U.S.C. §102(b) as being anticipated by French Patent No. 2,816,195 of Taylor. Applicants respectfully disagree.

Independent claim 1 is directed to an implantable spinal cross-connector having a central portion with at least one connector member formed on a terminal end thereof. The connector member has first and second opposed jaws, with at least one of the jaws being selectively movable between a first, open position wherein the first and second jaws are positioned a distance apart from one another, and a second, closed position, and the first and second jaws are adapted to engage a spinal fixation element therebetween. At least one of the jaws is integrally formed with the central portion. The cross-connector further includes a locking mechanism having a shank that is receivable within a non-expandable bore formed in the connector member. The locking mechanism is adapted to come into contact with each of the first and second jaws to selectively lock at least one of the first and second jaws in a fixed position.

Taylor does not teach a connector member having at least one jaw *integrally formed* with a central portion. As shown in FIG. 1, Taylor discloses a cross piece (1) formed from two parts (5, 6). Each part (5, 6) has an oblong opening (15) for receiving a screw (3) that mates with an attachment piece (2) to the parts (5, 6). The attachment pieces (2) are thus completely separate components that necessitate the use of the screw (3) to connect them to the parts (5, 6). The attachment pieces (2), which are configured to hold a rod, therefore do not include at least one jaw that is integrally formed with a central portion, as required by claim 1. Accordingly, claim 1, as well as claims 2-6, 8-10, 13, 15-29, 31-32, 34, and 36 which depend therefrom, distinguish over Taylor.

Independent claim 37 is similar to claim 1, except that claim 37 requires at least one connector member integrally formed on a terminal end of an elongate member. As stated above with regard to claim 1, Taylor does not teach or suggest a connector member integrally formed on an elongate member. Rather, the attachment pieces (2) of Taylor are completely separate components that removably couple to the cross-piece (1). Thus, claim 37, as well as claim 39 which depends therefrom, likewise distinguishes over Taylor.

(2) *U.S. Patent No. 4,611,582 of Duff*

Claims 1-2, 5-6, 8, 13, 18-22, 24-29, 31-32, 34, 36-37, and 39 are rejected pursuant to 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,611,582 of Duff. Applicants respectfully disagree.

Duff does not teach a connector member having at least one jaw *integrally formed* with a central portion, as required by claim 1. Duff discloses a vertebral clamp having two laminar clamps (20) including a hook attachment member (42) and a number of hooks (40) adapted to attach to the lamina of adjacent vertebrae. The laminar clamps (20) connect to the body of the device with clamping screws (48). Similar to the device disclosed in Taylor, the clamps (20) are completely separate components from the remainder of the device, and the clamping screws (48) are required to attached them to the device. Thus, no part of the clamps (20), including the hooks (40), are integrally formed with the body of the device. Accordingly, claim 1, as well as claims 2, 5-6, 8, 13, 18-22, 24-29, 31-32, 34, and 36 which depend therefrom, distinguish over Duff.

Independent claim 37 is similar to claim 1, except that claim 37 requires at least one connector member integrally formed on a terminal end of an elongate member. As stated above with regard to claim 1, Duff does not teach or suggest a connector member integrally formed on an elongate member. Thus, claim 37, and claim 39 which depends therefrom, likewise distinguishes over Duff. Claim 37 further requires that first and second opposed jaws include a bore formed therein, and that a threaded locking mechanism mates with a threaded portion of the bore in the second jaw to move at least one of the first and second jaws toward one another into a closed position. The hooks (40) disclosed in Duff do not include a bore formed therein. Rather, the hooks (40) are merely attached to a hook attachment member (42) which has a bore formed therein for receiving a screw. Duff also does not disclose a locking mechanism that mates with a bore to move the hooks (40) toward one another. In fact, there is no component disclosed in Duff to effect movement of the hooks (40) at all. Accordingly, claim 37, and claim 39 which depends therefrom, further distinguishes over Duff.

***Rejections Pursuant to 35 U.S.C. §103***

*(1) French Patent No. 2,816,195 of Taylor*

Claim 33 is rejected pursuant to 35 U.S.C. §103(a) as being unpatentable over French Patent No. 2,816,195 of Taylor. As discussed above, independent claim 1 distinguishes over Taylor. Thus, claim 33 is allowable at least because it depends from allowable claim 1.

*(2) U.S. Patent No. 4,611,582 of Duff*

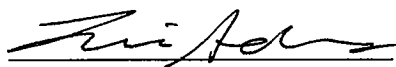
Claim 33 is rejected pursuant to 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,611,582 of Duff. As discussed above, independent claim 1 distinguishes over Duff. Thus, claim 33 is allowable at least because it depends from allowable claim 1.

***Conclusion***

Applicants submit that all pending claims are now in condition for allowance, and allowance thereof is respectfully requested. The Examiner is encouraged to telephone the undersigned attorney for Applicants if such communication is deemed to expedite prosecution of this application..

Respectfully submitted,

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